

DAMASO PASCUAL, PLAINTIFF AND APPELLANT, VS. LUIS SARMIENTO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 11951. November 20, 1917*

Ponente: TORRES, J.

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This appeal by bill of exceptions was filed by counsel for the plaintiff, from the judgment of September 29, 1915, in which the judge of the Seventh Judicial District found that each of the defendants held in the capacity of owner his respective parcel of land, and that the plaintiff had not proven his property right in such lands occupied by the defendants, and absolved the latter from the complaint, with the costs of the trial against the plaintiff.

By a writing of July 22, 1914, counsel for Damaso Pascual filed a complaint with the Court of First Instance of Bulacan, against Luis Sarmiento, Narciso Perez and Petra de la Cruz, alleging that Domingo Pascual was the absolute owner of a certain parcel of land that he had inherited from his father, situated in the place called Pug-pug or Bangat, 22 hectares and 6 ares in area, and bounded as described in the complaint; that, upon Domingo Pascual's death, in September, 1912, his widow and children took possession of said property as the owners thereof, until all of said heirs sold their respective interest in the land to the plaintiff, who, therefore, became its absolute owner; but that, about the middle of July, 1913, the defendants, without any right whatever and against the plaintiff's will, took possession of said land and refused to return it to its owner, the plaintiff, notwithstanding the repeated demands made upon them by the latter. As a second cause of action he also alleged that the defendants had been gathering the fruits of the land from July, 1913, up to the time of the complaint, to the grave damage and prejudice of his client. He therefore prayed the court to render judgment in the plaintiff's favor for the ownership and possession of the land claimed, to order the defendants to deliver the possession of the property to the plaintiff, to render accounts to the latter of the fruits gathered there- from, and jointly and severally to pay such sum as said accounts might show them to be owing him.

In answer to the aforementioned complaint the defendants made a general and specific denial of each and all of the allegations thereof, and in special defense alleged that they were, and had been for a very long period of time, the exclusive owners of the land claimed in the complaint, and that in an action brought by them for unlawful detainer, against the widow and children of Domingo Pascual—from whom, as recited in the complaint, the plaintiff's property right in the real estate in litigation originated—the defendants' claim prospered, they having obtained a favorable decision; that the justice of the peace court of Angat, the Court of First Instance of Bulacan and the Supreme Court, in their respective decisions which then were, and had been since 1913, final and executory, held that said heirs of the decedent Domingo Pascual were usurpers of the disputed land, which fact was well known to the plaintiff on account of his having been a bondsman of the heirs of Domingo Pascual in those proceedings. In countercomplaint they alleged that the plaintiff had brought the present complaint against them for the sole purpose of troubling and disturbing them in their possession of the land, and that they had suffered damages to the extent of P300—the amount they had to spend to defend themselves from the unwarranted complaint filed against them by the plaintiff.

The defendants therefore asked that they be absolved from the complaint and that the plaintiff be ordered to indemnify them in the sum of P300 for the damages suffered, and, besides, to pay the costs of the trial.

After the hearing and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which the plaintiff excepted and in writing asked for a reopening of the case and a new trial. This motion was overruled, exception was taken by the petitioner, and, upon presentation of the proper bill of exceptions, it was approved and transmitted to the 'clerk of this court.

The object of this suit is to determine who, among the plaintiff and defendant parties, are the true and lawful owners of the parcel of land situated in Pug-pug or Bangat, of the municipality of Norzagaray, Bulacan, which contains 220,604 square meters, and, according to the plaintiff, is bounded on the north by the Norzagaray River, on the south by a hill and lands belonging to Francisco Pascual, Agustin Pronuevo, Mariano Bernabe, Urbano de Ocampo, and Isidro Castillo; on the east, by lands of Sotero Mantilla and Francisco Andres; and on the west, by a hill and the road leading to the pueblo of Angat.

It is a fact and cannot be questioned that Domingo Pascual, for a very long period of time prior to and until his death, which occurred in 1912, was the possessor of a certain piece of real estate situated in the pueblo of Norzagaray, Bulacan, for Agustin Pronuevo and Francisco Andres, holders of adjacent property, testified that said Pascual had been in possession of the disputed land for at least about 25 years, which land passed into the possession of his widow and children, and subsequently, on June 20, 1914, was by absolute sale conveyed by these latter to the plaintiff Damaso Pascual through means of the notarial instrument Exhibit A, translated on pages 44-45 of the record.

The plaintiff's witnesses testified that the successors of the deceased Domingo Pascual peaceably held the litigated land from the time of the latter's death until the year 1913, when they were disturbed by the defendants. In the record of the proceedings in case No. 9106, submitted to us, it is in fact shown that on January 28, 1913, the said Luis Sarmiento, Narciso Perez and Petra de la Cruz brought suit against the heirs of said Domingo Pascual, for usurpation and unlawful detainer, in order to recover possession of three parcels of land, occupied by each of them respectively, which three parcels adjoined each other and had a total area of 7,000 square meters; that, on account of the change in the course of the river that separated said three parcels of land from the land belonging to the heirs of Domingo Pascual, said 7,000 square meters were included within the boundaries of the land belonging to said heirs, according to paragraph III of the complaint filed before the justice of the peace, and the testimony of Luis Sarmiento. It is to be noted that the justice of the peace court of Angat, on January 28, 1913, awarded a favorable judgment to the plaintiffs in that case, now the defendants, granting them the right of possession of the detained land containing about 7,000 square meters. That judgment became final because of defects in perfecting the appeal before the Court of First Instance.

As the area of the land claimed by the plaintiff in these proceedings is more than 22 hectares, and as the attorney for the defendants admitted that the parcels of land occupied by each of the latter and claimed as his exclusive property, is comprised within the perimeter of the land sought to be recovered by the plaintiff, counsel for each party stipulated (record, p. 51) that the lands claimed by the defendants are the same lands that were the subject-matter of that action brought by these latter against the heirs of Domingo Pascual, the plaintiff Damaso Pascual's predecessors in interest.

The land claimed by the plaintiff is bounded on the north by the Norzagaray River, which appears to be the boundary line between the adjoining pueblos of Angat and Norzagaray, and, according to documents presented by the plaintiff himself, is within the district of the municipality of Norzagaray; and the defendants' lands are within the territory of the pueblo of Angat, according to the documents presented by the latter, and are apparently

situated north of the plaintiff's land and are separated from it only by the Norzagaray River. In the course of the proceedings before the justice of the peace court of Angat, in 1913, the defendants alleged that a strip of land that belonged to them was included in the plaintiff's land, by the change in the course of the river that formed the boundary line between the two properties. This exception was also pleaded in the present case. The change in the course of the Norzagaray River appears to have been clearly proven, not only by the testimony of Luis Sarmiento, Angel Fajardo, and Luis Perez, but also by that of the adjacent holder Francisco Pascual, a brother of the original owner Domingo Pascual. Francisco Pascual stated (record, p. 60) that the Norzagaray River had been changing its course, and that its current, instead of eroding the defendants' lands, undermined land belonging to the Pascuals, and that this river now flows toward the barrio of Laoc, that is to say, over the defendants' lands, forming a curve and running more than 250 meters distant from the old river bed.

The record discloses that, according to the old topography of the Norzagaray River and the adjacent lands, this river used to run along the skirt of the hill situated toward the south and west of the defendants' lands, but that about the year 1910 it changed its course, curving toward the north, thus detaching the southern part of the defendants' lands and uniting it with the northern part of the plaintiff's land, for the northern boundary of the latter's land is a hill or high land over which the road passes that leads to the pueblo of Angat. According to the testimony of Angel Fajardo, the owner of a piece of land not long since sold by him to Narciso Perez, the area of this land detached by the river, is about 100 brazas (record, p. 88).

Moreover, the change in the course of the river which separates the pueblos of Norzagaray and Angat is fully proven in the record by the minutes of the session of the provincial board of Bulacan, held on February 27, 1914 (Exhibit 12). The members of this board visited these two pueblos and the place involved in dispute, for the purpose of adjusting the differences that had arisen between said municipalities on account of the change in course of the Norzagaray River, and they found that this stream did change its course and recurve toward the north, destroying a portion of the territorial area of Angat, where the defendants' lands are located. The board therefore, and for administrative purposes, fixed the old channel of the river as the boundary line between the two pueblos.

In recapitulation: The defendants are in lawful possession, as owners, of the parcels of land they respectively occupy in said capacity. These parcels of land adjoin each other. Narciso Perez' land, toward the east, comes first; Luis Sarmiento's lies in the middle, and next, toward the west, is that of Petra de la Cruz. The southern boundary of all these lands is the channel of the Norzagaray River, or the hill toward the south over the slope of which the bed of this river lies. The plaintiff, however, claims the ownership of a piece of land of more than 22 hectares in area whose northern boundary is the Norzagaray River, and founds his claim on a document which indeed is of quite recent execution and attests the purchase of the property by the heirs of the original owner, Domingo Pascual, on June 20, 1914 (Exhibit A), that is, about four months after the provincial board of Bulacan, resolving the jurisdictional conflict between the municipalities of Norzagaray and Angat, had fixed the old bed of said river as the boundary line between these two pueblos, in accordance with the provisions of subsection (a) of section 1 of Act No. 82. So that, if in said instrument of purchase and sale, Exhibit A, the contracting parties four months afterwards described the land as being situated in the municipality of Norzagaray, making the Norzagaray River the northern boundary, without specifying whether the present or the old channel was meant, the vendors knowing that said river had changed its course only a few years before by recurving toward the north, then it must be understood that the land described as situated in the pueblo of Norzagaray has the same boundary line as that fixed administratively between this pueblo and that of Angat, as was so decided by competent authority in February of that year [1914], for, as the vendors of the land in question, described as bounded by the channel of the Norzagaray River—a channel which was changed only in 1910—had been in its possession for a very long period of time, they cannot in these later years have acquired any justifiable right whatever to possess themselves

of more land than what had really belonged to them, and to claim as their property, as they now do, adjoining lands, by the mere fact of the change in the course of the river that served them as their northern boundary; neither are they justified in disposing of, by sale, a larger area of land than what actually belonged to them.

The plaintiff, making use of the action for recovery of possession, must prove his right of ownership over the whole of the land claimed in his complaint, and that obligation carries with it the duty to prove conclusively the possession of said land enjoyed by him and that held by his predecessors in interest, as well as its identity and its boundaries, including the fact, were it true, that the Norzagaray River had not changed its course. This, he has not done, as the law requires that he should.

However, the plaintiff maintains in this instance that by virtue of the right of accession, particularly under the provisions of article 370 of the Civil Code, he has the right to occupy as owner the old bed of said river, on the supposition that a change in its course actually occurred.

Article 370 of the Civil Code, relied upon, provides as follows:

"The beds of rivers which remain abandoned because the course of the water has naturally changed belong to the owners of the riparian lands throughout their respective lengths. If the abandoned bed divided estates belonging to different owners, the new dividing line shall run at equal distance therefrom."

From the above legal provisions it is inferred that the new boundary line between the plaintiff's land and that of the lands belonging to the defendants must be the line that passes through the middle of the abandoned river bed; and it cannot be affirmed that the new boundary between said two properties is the central line of the river in its new channel, but it must be understood that the boundary through the old bed of the river, before the latter changed its course, has been maintained.

Said article 370 of the Civil Code grants property rights only to the riparian owners, in the respective one-half of the bed of the river that has been abandoned by a change in the course of the stream; but it does not grant any property right whatever to the owner of the riparian land, in the portion of land belonging to another, lying between the abandoned river bed and the new channel opened by the stream in its new course. No right of prescription whatever is found in this sense and such as the plaintiff explicitly claims there is, in any legal provision whatever of the old Spanish codes, on which the present code is based, neither in this latter, nor even in the old Roman Law, for, as we have seen, the Civil Code grants him rights in one-half of the river bed immediately adjacent to his property, but not to the other half of said bed adjoining another's property through which the stream opened a new channel.

So, then, the plaintiff's claim has been fully shown to be improper. He cannot allege better rights than those held by his predecessors in interest who sold him the land, the area of which he claims extends over the defendants' lands, thus endeavoring to take advantage of the change in course of the river that is the boundary between the pueblos of Norzagaray and Angat.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

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